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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/731,909 | 12/10/2003 | Patrick A. Hosein | 4740-231 | 5796 |
| 24112 7590 12/24/2008 COATS & BENNETT, PLLC 1400 Crescent Green, Suite 300 Cary, NC 27518 | | | | |
| EXAMINER VUONG, QUOCHIEU B | | | | |
| ART UNIT 2618 | | PAPER NUMBER | | |
| MAIL DATE 12/24/2008 | | DELIVERY MODE PAPER | | |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/731,909

Applicant(s)

HOSEIN ET AL.

Examiner

Quochien B. Vuong

Art Unit

2618

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 August 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-57 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-54 is/are allowed.
- 6) ☒ Claim(s) 55-57 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-893)
- Paper No(s)/Mail Date 05/28/08, 11/11/08
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statement (IDS) submitted on 11/11/2008 and 05/28/2008 are in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statements are being considered by the examiner.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 55-57 are rejected under 35 U.S.C. 102(b) as being anticipated by Chih-Lin et al. (EP 0767548 A).

Regarding claim 55, Chih-Lin et al. disclose a mobile station comprising:
a transceiver circuit to send signals to and receive signals from a wireless communication network base station; and one or more processing circuits to process the signals sent and received via the transceiver circuit, said one or more processing circuits comprising a rate control support circuit configured to track received forward link signal power and to generate corresponding power reports for transmission to the base station (column 1, lines 5-8; column 9, lines 8-29; and column 11, line 44 – column 12, line 50).

As to claim 56, Chih-Lin et al. disclose wherein the rate control circuit is configured to transmit a power report on a per frame basis, wherein the mobile station transmits a power report per reverse link transmit frame (column 12, lines 1-50).

As to claim 57, Chih-Lin et al. disclose wherein the rate control circuit is configured to track received forward link signal power based on maintaining a filtered estimate of received traffic channel power (column 12, lines 1-50).

Allowable Subject Matter

3. Claims 1-54 are allowed over the cited prior art.

Regarding claims 1-54, the cited prior art fails to disclose the claimed invention with the reasons set forth in the Applicant's remarks filed 05/28/2008, pages 2-4

Response to Arguments

4. Applicant's arguments filed 05/28/2008 have been fully considered but they are not persuasive.

In lieu of the terminal disclaimer filed 08/31/2008, the previous non-statutory obviousness-type double patenting rejection has been withdrawn.

Regarding claims 1-54, the Applicant's argument is persuasive, therefore the previous rejection has been withdrawn.

Regarding claims 55-57, in response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., determining an achievable data rate of the mobile station

based on a reverse link path loss of the mobile station and a maximum transmit power, calculating priority values based on achievable data rate, and generating reverse link data rate control decisions) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Terminal Disclaimer

5. The terminal disclaimer filed on 08/13/2008 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of US Application No. 10/713,763 (now US Patent No. 7,466,669) has been reviewed and is accepted. The terminal disclaimer has been recorded.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Quochien B. Vuong whose telephone number is (571) 272-7902. The examiner can normally be reached on M-F 9:30-18:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nay Maung can be reached on (571) 272-7882. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Quochien B Vuong/
Primary Examiner, Art Unit 2618